83-525

No._____

Office-Supreme Court, U.S.
FILED
SEP 27 1983
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JACQUELYN A. JONES
AND
JACQUELYN A. JONES, AS GUARDIAN AD LITEM
FOR LOREN A. LADD, LORA ANNE LADD,
DAVID LADD, MINORS

vs.

MARGARET M. HECKLER
SECRETARY OF HEALTH AND HUMAN SERVICES

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Of Counsel for Petitioners
Raymond J. Bradley
Attorney at Law
P.O. Box 5090
Eugene, Oregon 97405
Telephone: (503) 343-1473

QUESTIONS PRESENTED

1. Whether the Secretary of Health and Human Services is bound under the Full Faith and Credit clause to honor the Lane County, Oregon, Circuit Court Orders which voided an Oregon adoption decree? Whether the Secretary of Health and Human Services erred in ruling that the State of Arizona would not grant Full Faith and Credit to the Lane County, Oregon, Circuit Court Orders?

2. Whether Appellants were denied Due Process of Law because Appellants were not given an administrative hearing by the Appeals Council of the Social Security Administration as required by the Order of the United States District Court for the Federal District of Oregon, dated May 5, 1980?

3. Whether Appellants were denied Equal Protection of the law by the Secretary of Health and Human Services for the reason that the Appellants' status is dependent upon whatever forum is interpreting the Lane County Circuit Court Orders?

PARTIES

The parties to this cause are those whose names appear in the caption above.

TABLE OF CONTENTS

Questions presented for review..... i

Parties.....ii

Index to Appendix.....iii

Table of Authorities..... v

Opinions below..... 2

Jurisdiction of this Court..... 3

Constitutional and statutory provisions involved..... 4

Statement of the case..... 6

Reasons for granting the petition for Writ of Certiorari.....11

I. Full Faith and Credit.....14
II. Due Process.....24
III. Equal Protection.....27

Conclusion.....33

INDEX TO APPENDIX

June 30, 1983

Order of the Court of Appeals for the 9th Circuit which denied Appellants petition for rehearing A-1

May 2, 1983

Memorandum of the Court of Appeals for the 9th Circuit..... A-2

August 21, 1981

Finding and Recommendation of the United States District court for the District of Oregon.....A-7

October 31, 1980

Decision of Appeals Council, Department of Health, Education and Welfare, Social Security Administration, Bureau of Hearings and Appeals.....A-17

May 5, 1980

Finding and Recommendation of the United States District Court for the District of Oregon.....A-36

March 4, 1980

Lane County, Oregon, Circuit Court Order which voided an adoption decree.....A-51

October 18, 1976

Lane County, Oregon, Circuit Court Order which set aside an adoption decree...A-54

TABLE OF AUTHORITIES

Adam v. Saenger, 303 US 59, 58 S. Ct. 454, 82 L Ed 649, reh den 303 US 666, 58 S. Ct. 640, 82 L Ed 1123 (1938).....22

Allen v. Califano, 452 F. Supp. 205 (1978).....17

Board of Regents v. Roth, 408 US 564, 92 S. Ct. 2701, 33 L Ed 548 (1972).....25

Brandt v. Brandt, 40 OR 485, 67 Pac. 508 (1902).....32

Campbell v. Kindred, 26 Or App 771, 554 P2d 599 (1976).....20

Cook v.Cook, 342 US 126, 72 S. Ct. 157, 96 L Ed 146 (1959).....23

Franklin v. Biggs, 14 Or App 450, 513 P2d 1216 (1973).....20

Goldberg v. Kelly, 397 US 254, 90 S. Ct. 1011, 25 L Ed 287 (1970).....26

Huges v. Industrial Commission, 211 P2d 463 (Arz.1949).....22

Hughes v. Aetna Casualty Co., 234 Or 426, 383 P2d 55 (1963).....19

Hurvich v. Califano, 457 F. Supp. 760 (D.C. Cal 1978).....29

In re Adoption of Luke, 414 P2d 176 (Arz. 1966).....22

In re Gallegos, 187 P. 573 (Arz. 1920)...22

Jimenez v. Weinberger, 417 U.S. 632, 94 S. Ct. 2496, 41 L Ed 2d 363 (1974).....30

Jones v. Harris, 629 F2d 334 (CA NC 1980).....29

Jones v. Roach, 575 P2d 345 (Arz. 1977)..16

Kovats v. Hobby, 132 F. Supp. 771.....15

Leeson v. Celebrezze, 225 F. Supp. (D.C. N.Y.).....29

Marin v. Augedahl, 247 US 142, 38 S. Ct. 452, 62 L Ed 1038, 1042 (1918).....16

Matter of Adoption of Hadtrath, 592 P2d 1262, 1264-5.....21

Milliken v. Meyer, 311 US 452 61 S. Ct. 339, 85 L Ed 278, reh den 312 US 712, 61 S. Ct. 548, 85 L Ed 1143 (1940)...23

Milliken v. Meyer, 311 US 457, 61 S. Ct. 339, 85 L Ed 278, 283, 132 ALR 1357, reh den 312 US 712, 61 S. Ct. 548, 85 L Ed 1143 (1940).....16

Norton v. Weinberger, 390 F. Supp. 1084 (D.C. Md. 1975), aff'd. 427 US 524, 96 S. Ct. 2771, 49 L Ed 2d 672.....29

Perez v. Gardner, 277 F. Supp. 985 (1967).....17

Perry v. Sindermann, 408 US 593, 92 S. Ct. 2694, 92 S. Ct. 2771, 33 L Ed 570 (1972).....25

Ray v. Social Security Board, 73 F. Supp. 58 (DC Ala. 1947).....31

Silbowitz v. Secretary of Health, Education and Welfare, 397 F. Supp. 862

(D.C. Fla. 1975).....29

Small v. Andrews, 20 Or App 6, 530 P2d 540 (1975).....20

Starace v. Celebrizze, 233 F. Supp. 452 (1964).....17

Sutton v. Leib, 342 US. 402, 72 S. Ct. 398, 96 L Ed 448, reh den 343 US 921, 72 S. Ct. 674, 96 L Ed 1334 (1952).....22

Treinies v. Sunshine Min. Co., 308 US 66, 60 S. Ct. 44, 84 L Ed 85, 93, reh den 309 US 693, 60 S. Ct. 464, 84 L Ed 1034 (1939).....23

Wachovia Bank and Trust Co. v. Chambliss, 260 SE 2nd 688 (1979).....14

Weber v. Aetna Casuality and Surety Co., 406 US 164, 173,92 S. Ct. 1400, 31 L Ed 768 (1972).....28

Weber v. Aetna Casualty and Surety, Co., 406 US 164, 176, 92 S. Ct. 1400, 1406, 31 L Ed 2d 768 (1972).....30

Weber v. Aetna Casuality and Surety Co., 406 US 164, 173,92 S. Ct. 1400, 31 L Ed 768 (1972).....28

Weber v. Aetna Casualty and Surety, Co., 406 US 164, 176, 92 S. Ct. 1400, 1406, 31 L Ed 2d 768 (1972).....30

Westerlund v. Croaff, 198 P2d 842 (Arz. 1948).....22

Ziskin v. Weinberger, 379 F. Supp. 124 (D.C. Ohio 1973).....29

TESTBOOKS AND TREATISES:

The American Law Institute, Restatement of Law, Conflict of Laws, 2d, 1971, §§6, 78, 290.....18

Adoption, 2 Am. Jur. 2d, §12.....17

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No._____

JACQUELYN A. JONES, AND JACQUELYN A. JONES,
AS GUARDIAN AD LITEM FOR
LOREN A. LADD, LORA ANNE LADD, AND
DAVID LADD, MINORS

v.

MARGARET M. HECKLER
SECRETARY OF HEALTH AND HUMAN SERVICES

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Raymond J. Bradley, Attorney at Law, on behalf of Jacquelyn A. Jones and Jacquelyn A. Jones, as guardian ad litem for Loren A. Ladd, Lora Anne Ladd, and David Ladd, minors, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

June 30, 1983

Order of the Court of Appeals for the 9th Circuit which denied Appellants petition for rehearing A-1

May 2, 1983

Memorandum of the Court of Appeals for the 9th Circuit.....A-7

August 21, 1981

Finding and Recommendation of the United States District court for the District of Oregon.....A-17

October 31, 1980

Decision of Appeals Council, Department of Health, Education and Welfare, Social Security Administration, Bureau of Hearings and Appeals.....A-36

May 5, 1980

Finding and Recommendation of the United States District Court for the District of Oregon.....A-36

March 4, 1980

Lane County, Oregon, Circuit Court Order which voided an adoption decree.....A-51

October 18, 1976

Lane County, Oregon, Circuit Court Order which set aside an adoption decree...A-54

JURISDICTION

The judgment of the Court of Appeals for the 9th Circuit (App. B,) was entered on May 2, 1983. A petition for rehearing was denied on June 30, 1983, (App. A, infra). The jurisdiction of this Court is invoked under the Social Security Act, 42 U.S.C.§405(g).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The United States Constitution provides in relevent part:

Article IV, Section 1. "Full Faith and Credit shall be given in each state of the public Acts, Records and Judicial Proceedings of every other state."

Amendment V. "No person shall be.... deprived of life, liberty, or property, without due process of law;"

Amendment IV. "...nor shall any state deprive any person, of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. ORS 109.381(3) provides, in part:

> After the expiration of one year from the entry of a decree of adoption in this state the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the child, have abandoned him and consented to the entry of such decree of adoption, and that the child became the lawful child of the adoptive parents or parent at the time when the decree of adoption was rendered, all irrespective of jurisdictional or other defects in the adoption proceeding; after the expiration of such one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings, and all

persons shall be bound thereby; provided, however, the provisions of this subsection shall not affect such right of appeal from a decree of adoption as may be provided by law.

STATEMENT

This case is before the court upon appeal of a judgment of the 9th Circuit Court of Appeals entered and dismissing Appellants' complaint for judicial review of the administrative action of the Secretary of Health and Human Services.

Appellant Jacquelyn A. Jones and wage earner Jack A. Ladd were married on April 1, 1961 and three children were born to the marriage; Loren A. Ladd, Lora Anne Ladd, and David Ladd. Appellant Jones and wage earner Jack A. Ladd were subsequently divorced on November 21, 1968.

Appellant Jacquelyn M. Jones married

Floyd Samuel Jones, Jr. on December 27, 1968 and a decree of adoption of the minor children, Loren A., Lora Anne, and David was entered on August 4, 1969, on petition of Floyd Samuel Jones, Jr. this petition alleged consent of the natural father, Jack A. Ladd, in the Circuit Court of Oregon for Lane County.

On February 27, 1971, wage earner Jack A. Ladd died in New Mexico and no state of domicile was ever established by substantial evidence by the Social Security Administration. Mr. Ladd's death certificate listed Arizona as his residence.

On May 15, 1972, a Decree of Dissolution of Marriage was entered between appellant Jacquelyn A. Jones and Floyd Samuel Jones, Jr.

Appellant Jacquelyn A. Jones filed an application for mother's insurance benefits on August 6, 1975, under the Social

Security Act based on the earnings record of Jack A. Ladd, deceased. She also filed concurrent applications for child's benefits on behalf of her minor children, Loren A., Lora Anne, and David on Jack Ladd's earnings record.

The Social Security Administration determined on August 13, 1976, that Appellants were entitled to the above benefits. Appellants were paid a sum of $14,495.20, including continuing monthly benefits.

In reliance on this entitlement, Appellant Jacquelyn A. Jones entered into various financial obligations to obtain necessaries for her and her aforesaid minor children. Further, and most important, Appellant obtained an Order dated October 16, 1976, in the Circuit Court of Oregon for Lane County which ordered that the adoption of August 3, 1969, be "set aside"

and further prcvided that, "for all intents and purposes, said children shall be considered to be the children of Jack A. Ladd, and that Floyd Samuel Jones, Jr. shall have no further claim whatsoever to said minor children." In effect, the adopting father was released from all responsibility of support of the minor children.

In a determination dated April 18, 1977, the Social Security Administration reversed it's determination of August 13, 1976, and found that Appellants, based on the same set of facts as it's August 13, 1976 determination, were not entitled to the survivor benefits previously awarded, and notified Appellants of overpayment.

Appellant's requested a hearing before an administrative law judge and after an oral hearing the administrative law judge decided, pertinent to this appeal, that appellants were not entitled to mother's

insurance benefits and surviving child's benefits, respectively.

Appellant's requested a review by the Appeals Council, Social Security Admininstration and that request was denied on March 28, 1978.

Appellants then filed a complaint for judicial review of this administrative action in the United States District Court for the District of Oregon. The United States Magistrate requested Plaintiff's counsel to have the Lane County Circuit Court judicially clarify its 1976 Order setting aside the adoption decree. On March 4, 1980, the Lane County Ciricuit Court, after an evidentiary hearing, made a finding that the August 4, 1969 adoption decree was void ab initio. The Order found that the natural father, Jack A. Ladd, did not have the jurisdictional mental state to consent to the adoption and therefore the

adoption was void. This case was remanded to the Appeals Council for reconsideration and hearing and to consider the March 4, 1980 Lane County Circuit Court Order. The Appeals Council, without remanding the case to an admininistrative law judge for hearing for further findings of fact, decided as a matter of law, as pertinent herein, that Appellants were not entitled to the respective benefits on their applications dated August 6, 1975.

The United States District Court for the District of Oregon subsequently agreed with the Appeals Council and dismissed Appellants' complaint herein. The Circuit Court for the 9th Circuit affirmed.

REASONS FOR GRANTING THE PETITION

This case involves important Constitutional issues of Full Faith and Credit, Due Process and Equal Protection.

The Ninth Circuit Court reasoned that the Secretary of Health and Human Services was not bound to follow the 1976 and 1980 Oregon Orders voiding the Oregon Adoption decree because the State of Arizona could refuse to grant Full Faith and Credit to those Oregon Orders.

One issue before the Court is the effect of an Oregon adoption decree and its subsequent voiding on jurisdictional grounds by an Oregon Court, and whether the voiding Orders are valid in the State of Arizona where the decedent was a resident at his death and therefore binding on the Secretary of Health and Human Services.

The Court reasoned that Oregon can only set aside a prior decree if it is void on its face. Since the initial adoption decree was not void in its face, a subsequent order voiding it for lack of jurisdiction is not valid and therefore an

Arizona Court would not be bound under the Full Faith and Credit Clause to recognize the Oregon Order.

This adoption involved three minor children. Their status is unclear under the law and hence they were deprived of Due Process of Law and Equal Protection under the law. In Oregon they are no longer adopted. In Arizona they are still considered adopted and would have no rights to their natural father's estate. In the State of Oregon they have no rights against their adopted father. Social Security refuses to recognize the Oregon Order voiding the adoption. The State of Arizona had no nexus with the children other than it was the residence of the decedent. Oregon is the state with all the substantial contacts and, therefore, Oregon's law should govern and be given Full Faith and Credit.

I.

FULL FAITH AND CREDIT

Whether the Secretary of Health and Human Services is bound under the Full Faith and Credit clause to honor the Lane County, Oregon, Circuit Court Orders which voided an Oregon adoption decree? Whether the Secretary of Health and Human Services erred in ruling that the State of Arizona would not grant Full Faith and Credit to the Lane County, Oregon, Circuit Court Orders?

Under the Full Faith and Credit Clause of the United States Constitution, a judgment or order entered in one jurisdiction is considered valid in other jurisdictions. As with other judgments, adoption decrees are also afforded this protection. Wachovia Bank and Trust Co. v. Chambliss, 260 SE 2nd 688

(1979). This principle has been held to specifically apply to a social security benefit determination. In Kovats v. Hobby, 132 F. Supp. 771, SDNY 1955, plaintiff's wife sought to attack a divorce decree that the wage earner husband had obtained in Arkansas nine years before he died. The court first noted that since the wage earner was domiciled in Connecticut at the time of his death, the Secretary must look to Connecticut law to determine the relationship of plaintiff to wage earner. However, the court then noted that Connecticut would give the Arkansas decree full faith and credit unless plaintiff could find some jurisdictional defect.

While the Arizona courts have not specifically ruled on the question of whether it would extend full faith and credit to a sister state's adoption decree, it is settled that Arizona will generally

recognize as valid judgments entered in other jurisdictions. Jones v. Roach, 575 P2d 345 (Ariz. 1977).

The U.S. Supreme Court has said, when discussing cases involving Full Faith and Credit judgments between sister states:

> "Whether the decision was right or wrong is not open to discussion here. If wrong, it was subject to correction on proper application to the court which made it, or on appeal, but it was not void or open to collateral attack." Marin v. Augedahl, 247 US 142, 38 S.Ct. 452, 62 L Ed 1038, 1042 (1918).

The Court added "whatever mistake of law may underlie the judgment, it is conclusive to all the media concludeni." Milliken v. Meyer, 311 US 457, 61 S.Ct. 339, 85 L Ed 278, 283, 132 ALR 1357, reh den 312 US 712, 61 S.Ct. 548, 85 L Ed 1143 (1940).

Even if the Secretary of Health and Human Services does not choose to follow the Full Faith and Credit Clause, she

should still follow the whole law of the domicile state. If Arizona law is to be applied, not only substantive adoption principles should be considered, but the conflicts of laws principles should also be applied. Perez v. Gardner, 277 F. Supp. 985 (1967); Allen v. Califano, 452 F. Supp. 205 (1978); Starace v. Celebrizze, 233 F. Supp. 452 (1964). Unfortunately, the 9th Circuit Court of Appeals made no inquiry as to whether Arizona would follow the Oregon substantive law of adoptions. Clearly, therefore, some reference to conflict of laws principals need be made.

The validity of an adoption decree is, under the general rule of conflicts, to be determined by the law of the state granting the decree. The American Law Institute, Restatement of the Law, Conflict of Laws, Second, 1971, section 290. Adoption 2 Am. Jur. 2d, section 12. This rule is based

on the fundemental principle that one should look to the relative interests and policies of the states when determining which state law to follow. The American Law Institute, Restatement of the Law, Conflict of Laws, Second, 1971, section 6. As adoptions are purely the creator of state statutes, they should be interpreted only by the creating state's laws. The American Law Institute, Restatement of the Law, Conflict of Laws, second, 1971, Chapter 11, Topic 3. An adoption decree that is void in the state of rendition will not be recognized in other states. See The American Law Institute, Restatement of the Law, Conflicts of Laws, section 78, Comment C.

The 1980 Order of the Lane County Circuit Court voided ab initio the 1976 adoption decree. As such, it never had any effect. Therefore, under general conflict

of laws principles, Arizona should, and would, recognize Oregon's interpretation of an Oregon decree.

In Hughes v. Aetna Casualty Co., 234 Or 426, 383 P2d 55 (1963) the Petitioner moved to vacate a thirty year old adoption in which there was no consent from the natural parents to the adoption. The Respondent argued that O.R.S. 109.381 acted as a statute of limitations upon any attack on the adoption, and, therefore, Petitioner's suit should be dismissed. The Oregon Supreme Court specifically noted O.R.S. 109.381 and then stated that the lack of consent was a jurisdictional defect that rendered that adoption a nullity and void on its face. The court then stated:

> "Such a judgment may be attacked at any time by anyone, including the party in whose favor it is given, and may be impeached in any action, direct or collateral. It is not necessary to take any steps to vacate or avoid a void

> judgment; it may simply be ignored."

And in regard to O.R.S. 109.381, the court stated that "...a statute of limitations is not applicable to a judgment void on its face." This analysis of the effect of a statute of limitations upon a void, as opposed to voidable, adoption has been consistently followed in Oregon. Campbell v. Kindred, 26 Or App 771, 554 P2d 599 (1976); Franklin v. Biggs, 14 Or App 450, 513 P2d 1216 (1973); Small v. Andrews, 20 Or App 6, 530 P2d 540 (1975).

In Small v. Andrews, the Oregon Court of Appeals held that the adoption of children by their natural father for the sole reason of terminating her rights was void. Small v. Andrews, 20 Or. App. 6, 530 P2d 540 (1975). As a void order, the statutory statute of limitations of ORS 109.381 was irrelevant. Here the natural

mother gave, and then later withdrew, consent. The Court of Appeals, citing to Hughes, ruled that the subsequent absence of consent denied the initial court of its jurisdiction and therefore made the judgment void. In dicta this Court said;

> "Apart from specific statutory exceptions (ORS 109.314 to 109.329) the consent of parents, guardian or other person in loco parentis has been made a jurisdictional prerequisite to the entry of any adoption decree (ORS 109.312) in this state; action taken in the absence of the necessary consent is 'a nullity, not voidable, but void' ***." Id. at 8.

As in Oregon, the Arizona Courts have ruled that the consent of the natural parents is a jurisdictional prerequisite. This was specifically noted in Matter of Adoption of Hadtrath, 592 P2d 1262, 1264-5, where the Arizona Court stated, "It is true that the consent of the natural parents required by A.R.S. 58-106 is jurisdictional

and that a judgment lacking this prerequisite would be void." See also Huges v. Industrial Commission, 211 P2d 463 (Arz. 1949); In re Adoption of Luke, 414 P2d 176 (Arz.1966); Westerlund v. Croaff, 198 P2d 842 (Arz.1948); In re Gallegos, 187 P. 573 (Arz. 1920).

If the Secretary of Health and Human Services is saying that the Lane County Circuit Court lacked jurisdiction in its decree voiding the adoption, she has mistaken certain conflicts of law precepts. To begin with, one claiming that a sister state judgment lacked jurisdiction has the burden of proof Sutton v. Leib, 342 US 402, 72 S.Ct. 398, 96 L Ed 448, reh den 343 US 921, 72 S.Ct. 674, 96 L Ed 1334 (1952). A judgment which on its face appears to be that of a court of general jurisdiction is presumed to have jurisdiction over the incident case. Adam v. Saenger, 303 US 59,

58 S.Ct. 454, 82 L Ed 649, reh den 303 US 666, 58 S.Ct. 640, 82 L Ed 1123 (1938); Milliken v. Meyer, 311 US 452 61 S.Ct. 339, 85 L Ed 278, reh den 312 US 712, 61 S.Ct. 548, 85 L Ed 1143 (1940); Cook v. Cook, 342 US 126, 72 S.Ct. 157, 96 L Ed 146 (1959). The Secretary's assertation in the original decision that the Oregon Court order "has no legal force" obviously does not carry that burden of proof.

Even assuming, arguendo, that the Oregon Court lacked jurisdiction this is not an appropriate reason for a sister state to ignore the order. As the Oregon court considered the question of jurisdiction the principles of res judicata would preclude a sister state from re-exploring this area. Treinies v. Sunshine Min. Co., 308 US 66, 60 S.Ct. 44, 84 L Ed 85, 93, reh den 309 US 693, 60 S.Ct. 464, 84 L Ed 1034 (1939).

II.

DUE PROCESS OF LAW

Whether Appellants were denied Due Process of Law because Appellants were not given an administrative hearing by the Appeals Council of the Social Security Administration as required by the Order of the United States District Court for the Federal District of Oregon dated May 5, 1980?

By the remand order dated May 5, 1980, in the United States District Court the Secretary of Health and Human Services was ordered to hold an additional hearing. Instead, the Secretary of Health and Human Services only considered questions of law. The Secretary did not allow any submission of facts at the hearing. The Secretary erred by not holding a new hearing espe-

cially considering the inadequate development of facts on the crucial issue of the children's legal or actual dependency. The 1980 Order of the Lane County Circuit Court recited that testimony was taken yet no request was made by the Secretary of Health and Human Services to receive a copy of the Court transcript.

As a general proposition, the appropriate process due to an individual will depend on his/her propriety interest. There is, of course, no property interest unless the benefit has previously been granted by the government to the indiviudal. See eg. Board of Regents v. Roth, 408 US 564, 92 S.Ct. 2701, 33 L Ed 548 (1972); Perry v. Sindermann, 408 US 593, 92 S.Ct. 2694, 92 S.Ct. 2771, 33 L Ed 570 (1972). In the case before you, a determination had been made by the Secretary and payments had been made to the

Plaintiff's children. They, thus, had some entitlement right to receipt of the Social Security Trust Fund benefits.

Given that these benefits are intended to provide for the maintenance and basic care of the minor children, the benefits take on aspects of necessities to be protected by the highest standards of due process rights. In Goldberg v. Kelly, the Supreme Court held that such rights could not be denied a pre-determination hearing which included a complete process for the admission of evidence, cross examination of witnesses, etc. ... . Goldberg v. Kelly, 397 US 254, 90 S.Ct. 1011, 25 L Ed 287 (1970). On the other hand, there was no reason, compelling or otherwise, for the Secretary to only provide such a cursory hearing.

III

EQUAL PROTECTION OF THE LAW

Whether Appellants were denied Equal Protection of the law by the Secretary of Health and Human Services for the reason that the Appellants' status is dependent upon whatever forum is interpreting the Lane County Circuit Court Orders?

If the Secretary of Health and Human Services is able to disregard an Oregon Order setting aside an adoption, then important policy issues become relevant relating to the children's status and, therefore, their rights. Given the Secretary's decision, the children's legal status lacks consistency and predictability. For Social Security purposes, the children are born of one father, for other purposes the children are

denominated with different parentage. Their status, rights, and duties would depend upon which forum is interpreting the Lane County Order voiding the adoption.

In dealing with questions of family rights, the Supreme Court has said,

> "...the essential inquiry [is] however, inevitably, a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?" Weber v. Aetna Casuality and Surety Co., 406 US 164, 173,92 S. Ct. 1400, 31 L Ed 768 (1972).

In the case before you although not one dealing with illegitimacy, as was Weber, we can still look to the stated purposes of the statute to determine the legitimate state interest involved. After determining the purpose of the statute, we must then balance the personal rights involved.

The stated purposes of the Old-Age and Survivors Insurance Benefit Plan have been often and variously stated. Admittedly,

one purpose of the section relating to benefits to children of a deceased insured member is to aid children who are actually dependent. Norton v. Weinberger, 390 F. Supp. 1084 (D.C. Md. 1975), aff'd. 427 US 524, 96 S.Ct. 2771, 49 L Ed 2d 672, Leeson v. Celebrezze, 225 F. Supp. (D.C. N.Y.). The courts have also held that the purpose of this statute is to (1.) offset economic dislocation, (2.) provide children with personal attention from the surviving parent, (3.) assure that families will have a tolerable standard of living, and (4.) provide at least some measure of income and security to those who have lost a parent. Jones v. Harris, 629 F2d 334 (CA NC 1980), Hurvich v. Califano, 457 F. Supp. 760 (D.C. Cal 1978), Silbowitz v. Secretary of Health, Education and Welfare, 397 F. Supp. 862 (D.C. Fla. 1975), Ziskin v. Weinberger, 379 F. Supp. 124 (D.C. Ohio

1973). Given the numerous purposes of the statute, it is difficult to understand the Secretary's actions.

The statute itself appears to equate illigetimate with adopted children. 42 USC§(d)(3). The Supreme Court has noted that there is a "social opprobrium" suffered by these hapless (illegitimate) children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where...the classification is justified by no legitimate state interest, compelling or otherwise." Weber v. Aetna Casualty and Surety, Co., 406 US 164, 176, 92 S Ct 1400, 1406, 31 L Ed 2d 768 (1972), see also Jimenez v. Weinberger, 417 US 632, 94 S.Ct. 2496, 41 L Ed 2d 363 (1974). There appears to be no compelling or other state reason for ignoring four of the statutes purposes (noted above) and adopting only the Norton

rationale.

The children's interest in this determination includes, but goes beyond, issues of economic security. Without doubt the purpose of the Social Security schemata to insure base levels of economic well being will not be served by the Secretary's decision. See eg. Ray v. Social Security Board, 73 F. Supp. 58 (DC Ala. 1947).

Beyond economic reasons, the Secretary has fostered upon these children, through his decision, a status which is confused and harmful. In order to maintain consistency and predictability of the childrens' legal status, the Secretary must recognize the Order setting aside the adoption as valid under Oregon and Arizona law and give it retroactive effect. The Court said in Hughs v. Aetna Casualty Co., supra:

"The question is whether the

> decree of adoption is void because of asserted procedural defects. If that be so, the relationship of mother and son...had never been severed and he is her sole heir at law and entitled to take her estate."

Under Oregon law "to set aside" is to annul, to make void. Brandt v. Brandt, 40 OR 485, 67 Pac. 508 (1902). The Order must be considered valid and not collaterally declared invalid in an administrative hearing for Social Security benefits because of the paramount importance of protecting and giving certainty to their status under the Lane County Order. That Order had the legal effect of judically declaring what was already fact; the adoption was void, making the children dependent upon their natural father and bringing them within the Act's coverage under 42 U.S.C. 402(d)(3).

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a writ of certiorari should issue to review the Judgment and Opinion of the United States Court of Appeals for the Ninth Circuit.

Date this 22 day of September, 1983.

Respectfully submitted,

RAYMOND J. BRADLEY
Attorney at Law
P.O. Box 5090
Eugene, Oregon 97405
(503) 343-1473

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JACQUELYN A. JONES and JACQUELYN A. Jones, as Guardian Ad Litem for LOREN A. LADD, LORA ANNE LADD, and DAVID LADD, Minors,	)	No. 81-3585
Plaintiffs-Appellants,	)	
vs.	)	ORDER (filed June 30, 1983)
RICHARD S. SCHWEIKER, Secretary of Health and Human Services,	)	
Defendant-Appellee.	)	

Appeal from the United States District
for the District of Oregon

Before: KENNEDY, TANG, and Ferguson,
Circuit Judges.

The petition for rehearing is DENIED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JACQUELYN A. JONES and JACQUELYN A. Jones, as Guardian Ad Litem for LOREN A. LADD, LORA ANNE LADD, and DAVID LADD, Minors,	)	No. 81-3585
Plaintiffs-Appellants,	)	D.C. No. 78-482 RE
vs.	)	MEMORANDUM (filed May 2, 1983)
RICHARD S. SCHWEIKER, Secretary of Health and Human Services,	)	
Defendant-Appellee.	)	

Appeal from the United States District Court for the District of Oregon

Honorable James A. Redden, United States District Judge, Presiding

Argued and Submitted: October 5, 1982

Before: KENNEDY, TANG, and FERGUSON, Circuit Judges.

Jacquelyn Jones, the appellant, was married in 1961 to Jack Ladd, the wage earner in this case. There are three children of that marriage. Jacquelyn and

Jack Ladd were divorced in 1968, and Jacquelyn then married Floyd Jones. Jones adopted the three children of the first marriage in a 1969 proceeding in the Lane County Circuit Court.

Ladd, then residing in Arizona, was killed in an automobile accident in 1971. In 1972, Jacquelyn and Jones were divorced. In 1976, seven years after the adoption decree had been entered, Jacquelyn obtained an order from the Lane County Circuit Court setting the adoption decree aside.

Jacquelyn claims mother's insurance benefits under the Social Security Act. The Social Security Administration contends no dependency status exists because the children had been adopted by another individual. 42 U.S.C.A. § 402(d)(3). The appellant contends that the decree of Lane County setting aside the original adoption serves to reinstate the statutory benefits.

The status of the children vis a vis their natural father Ladd is, all parties concede, determined by Arizona law, the state of Ladd's domicile at the time of his death. See 42 U.S.C.A. § 416(h)(3)(A). An Arizona court is obligated by the United States Constitution to give full faith and credit to the valid judgment of the sister state. United States Constitution, article IV, section 1. We must decide whether the full faith and credit clause compels Arizona to recognize the judgment of the Lane County Circuit Court.

We believe that Arizona would not be obligated to recognize the second Oregon decree. Under Oregon law, a prior judgment may not be set aside on collateral attack except for lack of jurisdiction which appears on the face of the record. State v. Briggs, 245 Or. 503, 506, 420 P.2d 71 (1967). Adoption decrees are final

judgments under Oregon's revised statute 109.381. The Lane County Circuit Court set aside the original adoption decree even though no jurisdictional defect appeared on the face of that judgment. It thus transgressed the scope of its own jurisdiction, and Arizona courts would not give the decree full faith and credit. Jones v. Roach, 118 Ariz. 146. 575 P.2d 345, 348 (Ariz. App. 1977). That leaves in force the original adoption decree.

The appellant's argument that the Social Security Administration should have treated her children as dependents of the deceased even if they were validly adopted is ill-founded, since the requisite payments from the wage earner to the children have not been established.

The foregoing draws largely upon the reasoning of United States Magistrate George E. Juba and United States District

Judge James A. Redden, both of them skilled in the interpretation of the laws of the State of Oregon. We agree with their analysis and conclusion.

AFFIRMED.

APPENDIX A-7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JACQUELYN A. JONES and JACQUELYN A. Jones, as Guardian Ad Litem for LOREN A. LADD, LORA ANNE LADD, and DAVID LADD, Minors,	)	Civil No. 78-482
Plaintiff,	)	
vs.	)	FINDINGS AND RECOMMENDATION
RICHARD S. SCHWEIKER, Secretary of Health and Human Services,	)	(filed August 21, 1981)
Defendant.	)	

Plaintiff seeks judicial review of a final determination of the Secretary of Health and Human Services (Secretary) terminating plaintiff's children's and mother's social security benefits. This court has jurisdiction pursuant to 42 U.S.C. § 405(g). The case turns on whether an Arizona court would recognize the decree of an Oregon court setting aside an adoption decree as void ab initio. I determine

that in this case it would not.

The case has a complicated history which I set out in my earlier Findings and Recommendation of May 5, 1980. I merely summarize that history here.

In 1961, plaintiff Jacquelyn McDuffee married Jack A. Ladd, the wage earner in this case. They had three children together. In 1968, Jacquelyn McDuffee divorced Jack Ladd and shortly thereafter married Floyd Jones. In 1969, the Lane County Oregon Circuit Court issued an adoption decree which recited that Ladd had consented to the adoption of the three children by Jones.

Jack Ladd, who was then residing in Arizona, was killed in an automobile accident in 1971.

In 1972, Jacquelyn McDuffee and Floyd Jones were divorced. In 1975, she applied for mother's and surviving children's

social security benefits on the account of Jack Ladd. After some bureaucratic shifts of position, the Social Security Administration (SSA) determined that plaintiff and her children were elegible for benefits.

In 1976, Jacquelyn McDuffee obtained an order from the Lane County Circuit Court setting aside the adoption decree. In 1977, the SSA again reversed itself and decided that plaintiff and her children were not entitled to benefits. An Administrative Law Judge (ALJ) and the Appeals Council both agreed with this position and it became the final decision of the Secretary.

In 1978, an appeal of that decision was filed in this court. While decision was pending, the Lane County Circuit Court issued a decree that the adoption was void ab initio. That decree was based on evi-

dence which the court heard that Jack Ladd was not competent to consent to the adoption at the time he purportedly gave his consent.

Following the filing of this decree, I issued my Findings and Recommendation that the case be remanded to the SSA. The Appeals Council reviewed the case on remand and decided that plaintiff was still not entitled to benefits. That decision is the final decision of the Secretary and is the decision which is under review in this proceeding.

None of the critical facts in this case is in dispute.

In my Findings and Recommendation, I summarized the relevant sections of the Social Security Act 42 U.S.C. §§ 301 et seq.:

> Plaintiff does not question the ruling as to mother's benefits, since that flows inevitably from

the decision on children's benefits.

The basic eligibility requirements for children's benefits are set forth in § 402(d) of the Act. This section must be read in conjunction with § 416 regarding the determination of family status. Among the listed requirements are two distinct but related factors, namely the child-parent relationship and the dependency of the child on the wage earner. Failure to separate these two factors has casused much of the confusion in this case. For a person to qualify for child's benefits, he must first be the "child" of the wage earner. Additionally, he must be, or have been, dependent on that wage earner at the mandatory time, that is the time of the wage earner's death. 42 U.S.C. § 402(d)(1)(ii).

A ligitimate child proves his relationship to the wage earner father by means of his birth certificate. 20 C.F.R. § 404.731. Thus, in the present case, the "child" status of plaintiff children with regard to their natural father Jack Ladd, is not to be questioned. But that, by itself, is not enough. "Dependency" is also required.

For ligitimate children the dependency issue is usually never raised. Section 402(d) (3) automatically and perpetually confers

> "deemed dependency" on such vis-a-vis their natural father. However, there is one important exception. If "at such time such insured individual was not living with or contributing to the support of such children . . . and such children had been adopted by some other individual" the children are not deemed to be dependents of the natural father.
>
> Therefore, section 4029(d)(3) presumes that the children in question are in fact issue of the deceased father. The exclusionary language describes the only situation in which the Social Security Administration denies the "deemed dependency" presumption to legitimate children.

Findings and Recommendation at 4-5.

On remand, the Appeals Council based its decision that plaintiff and her children are not entitled to benefits on the fact the wage earner, Jack Ladd, was domiciled in Arizona, not Oregon. The Social Security Act, 42 U.S.C. § 416(h)(2)(A) provides:

> In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this

> subchapter, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at such time such applicant files application, or if such individual is dead, by the courts of the State in which he was domiciled at the time of his death. . . . Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

The Appeals Council concluded that under Arizona law, the state in which the wage-earner was domiciled, the decree setting aside the adoption ab initio would not be recognized. Therefore, it reasoned, plaintiff is not entitled to benefits because at the time of his death Arizona would consider the children as having been adopted.

The central issue in this case is now whether an Arizona court would recognize as vaild the Lane County Circuit Court decree setting aside the adoption decree of the

three children as void ab initio. The grounds which the Lane County Circuit Court gave for setting aside the decree ab initio is that "Mr. Jack A. Ladd did not possess the mental ability to consent to the adoption of his children by Mr. Floyd Samuel Jones Jr. on August 4, 1969." In Oregon, valid consent by the natural parent is a jurisdictional prerequisite to a valid adoption. Hughes v. Aetna Casualty Co., Or. 426, 435, 383 P.2d 55 (1963).

However, a final judgment may not be collaterally attacked unless the court's lack of jurisdiction to enter the judgment appears on the face of the record. State v. Briggs, 245 Or. 503, 506, 420 P.2d 71 (1967). An adoption decree is a final judgment under ORS 109.381. Thus, under Oregon law, the Lane County Circuit Court lacked the authority to void the adoption decree ab initio becuase Ladd's

lack of capacity to consent did not appear on the face of the record. The Lane County Circuit Court had to hear testimony in order to make its determination that Ladd lacked capacity to consent.

Arizona would recognize the original adoption decree because Arizona will give full faith and credit to final judgments of its sister states. Jones v. Roach, 118 Ariz. 146, 575 P.2d 345, 348 (Ariz. App. 1977). Finality of judgments is determined by the law of the state of redition. Id. at 349. However, Arizona will not give full faith and credit to a judgment which is invalid or unenforceable. Id. at 348. The decree of the Lane County Circuit Court setting aside the adoption ab initio was not a vaild judgment under Oregon law. Therefore, Arizona would not give full faith and credit. Consequently, under Arizona law, the children are still the

adopted children of Floyd Jones. The children are thus not deemed to be dependents of Jack Ladd under 42 U.S.C. § 402(d)(3). Plaintiff and her children are not entitled to mother's and surviving children's benefits under the Social Security Act.

Accordingly, the decision of the Secretary should be affirmed.

Dated this 21 day of August, 1981.

/s/ George Juba
United States Magistrate

APPENDIX D

Department of

HEALTH, EDUCATION, AND WELFARE

Social Security Administration

Bureau of Hearings and Appeals

DECISION OF APPEALS COUNCIL
(filed October 31, 1980)

In the Case of	Claim for
Jacquelyn A. Jones o/b/o/ David, Lora and Loren Ladd	Mother's Insurance Benefits; Surviving Child's Insurance Benefits
(Claimant)	
Jack A. Ladd (deceased)	435-54-7269
(Wage Earner	(Social Security No.)

This case is before the Appeals Council on remand from the United States District Court for the District of Oregon (Civil Action No. 78-842)

The administrative law judge, in the hearing decision of September 30, 1977,

held that the claimants were not entitled to the benefits which they sought, but were without fault in causing an overpayment of such benefits and recovery would defeat the purpose of Title II and be against equity and good conscience. Thus, the overpayment was waived. The Appeals Council vacates its denial of the claimant's request for review of that decision.

The statements of the administrative law judge as to the pertinent provisions of the Social Security Act, the issues in the case, and the evidentiary facts which were before him are incorporated herein by reference.

Evidence in addition to that previously considered has been introduced into the record as Exhibits AC-1 through AC- 5 and is briefly described in the appended list of exhibits.

ISSUES

The issues in the case are whether Jacquelyn A. Jones is entitled to surviving divorced mother's benefits and whether Loren, Lora, and David Ladd are entitled to surviving child's benefits. Specifically, the issue is whether the above named children are the children of the deceased wage earner, as defined in the Act, and whether they were dependent upon him at the time specified by the Act.

LAW AND REGULATIONS

Section 202(g)(1)provides that an individual shall be entitled to surviving divorced mother's benefits if such individual has in her care a child of the insured individual entitled to child's insurance benefits and meets certain other requirements and not pertinent herein.

Section 202(d)(1) provides, as is pertinent, that a child shall be entitled to child's insurance benefits if he is the child of an insured individual and if he was dependent upon such individual at the time of his death. Section 202(d)(3) states that "a child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(c)unless, at such time, such individual was not living with or contributing to the support of such child and -

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual

For purposes of this paragraph, a child deemed to be a child of a fully or

currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual.

Section 216(h)(3)provides that an applicant who is the son or daughter of an insurerd individual, but who is not and is not deemed to be the child of such insured individual under paragraph (2), shall nevertheless be deemed to be the child of such insured individual if:

"(C) In the case of a deceased individual -

(i) such insured individual -

(I) had acknowledged in writing that the applicant is his son or daughter.

(II) had been decreeded by a court to be the father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter,

and such acknowledgement, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died."

Section 404.354 (b) of the Social Security Administration Regulations No. 4 provides that the Administration looks to the laws

of the State where the insured had a permanent home when he died to determine a child's relationship to the insured.

Section 404.361 of the Regulations provides that a natural child is dependent upon the insured unless the child has been legally adopted by someone else during the insured lifetime. In that case, a child is considered dependent on the insured only if he was either living with the child or contributing to the child's support when the insured died.

EVALUATION OF THE EVIDENCE

The facts in the case will be briefly restated. Jacquelyn A. Jones and Jack A. Ladd were married on April 1, 1961 and Loren, Lora, and David Ladd were born to this marriage. Jacquelyn Jones and Jack Ladd were divorced on November 21, 1968 and

she remarried on December 27, 1968 to Floyd Samuel Jones, Jr. Floyd Jones adopted Loren, Lora, and David Ladd on August 4, 1969. Jack Ladd died February 27, 1971, whild domiciled in Arizona. Jacquelyn and Floyd Jones subsequently were divorced effective with July 15, 1972. At the time of his death, Jack Ladd was neither living with nor contributing to the support of the children. Neither Arizona, the wage earner's state of domicile, nor Oregon, the children's domicile, permit a child to inherit from his natural parent after he has been adopted by another unless the natural parent is married to the adopting parent. On October 18, 1976, an order was issued by the Circuit Court of the State of Oregon for Lane County setting aside the decree of adoption of Loren, Lora and David Ladd by Floyd Jones. On March 4, 1980, the Circuit Court issued a further order

declarng that the decree of adoption dated August 4, 1969, was void an initio because Jack A. Ladd lacked the mental ability to give consent to the adoption.

The plaintiffs argue that the latter County Court order have, in effect, found that the children were never adopted. Therefore, it is further argued dependency could be deemed and the children entitled to child's insurance benefits.

As provided in section 404.354(b) of Social Security Adminsistration Regulations No. 4 (20 CFR 404.354(b), it is the law of the state where the wage earner was domiciled at his death which determine a child's relationship to the insured. In this case, the wage earner was domiciled in Arizona when he died. Thus, the Arizona laws are controlling. Arizona Revised Statutes, §8-123, provide that after one year from

the date of entry of an adoption decree, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding. In Arizona, a final order of adoption is a final judgment, subject to the same finality and standing as any other judgment of a court of competent jurisdiction. Rule 60(c) of the Arizona rules of Civil Procedure sets a six-month limitation on an action to set aside or reopen a final judgment on the ground that the judgment was procured through fraud. However, Arizona courts have held that statutes of limitation restricting the period during which judgments may be opened have no application to void judgments.

In Arizona, a final order of adoption is void on its face if the court that issues

it lacks any one of three elements: (1) jurisdiciton of the subject matter; (2) jurisdiction of the parties; or (3) jurisdiction to render the judgment given.

Under the facts of the present case, Arizona courts would not set aside the adoption decree even if the wage earner's consent had been fraudulently obtained at the time of the adoption since jurisdiction was not at issue. Although a state might normally give another state's actions "full faith and credit" under the doctrine of reciprocity, it is questionable whether Arizona would consider the above orders valid since they might be seen simply as devices to "raid an estate."

Further, Oregon Statutes 109.381 on adoption provide:

(1) A decree of a court of this state granting an adoption, and the proceedings

in such an adoption matter, shall in all respects be entitled to the same presumptions and be as conclusive as if rendered by a court of record acting in all respects as a court of general jurisdiction over the persons and the cause shall be presumed to exist.

(2) Except for such right of appeal as may be provided by law, decrees of adoption shall be binding and conclusive upon all parties to the proceeding. No party nor anyone claiming by, through or under a party to an adoption proceeding, ,ay for any reason, either by collateral or direct proceedings, question the validity of a decree of adoption entered by a court of competent jurisdiction of this or any other state.

(3) After the expiration of one year from the entry of a decree of adoption in this state the validity of the adoption

shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the chid, have abandoned him and consented to the entry of such decree of adoption, and that the child became the lawful child of the adoptive parents or parent at the time when the decree of adoption was rendered, all irrespective or jurisditional or other defects in the adoption proceeding; after the expiration of such one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings, and all persons shall be cound thereby; provided, however, the provisions of this subsection shall not affect such right of appeal from a decree of adoption as may be provided by law.

(4) The provisions of this section shall apply to all adoption proceedings instituted in this state after August 5, 1959. This section shall also apply, after the expiration of one year from August 5, 1959, to all adoption proceedings instituted in this state before August 5, 1959.

As can be seen, the Oregon statute also gives no provision for vacating or voiding an adoption decree after one year. At the end of that time it is final and binding upon all parties. Thus, again even if the adoption had been improperly granted initially, there is no basis in the law for setting it aside or declaring it void ab initio. Thus, the Council concludes that the Lane county Circuit Court had no authority to issue the orders of October 1976 and March 1980 and that even if it did have such authority, Arizona as the state

of domicile would not recognize their validity.

Even aside from the questions of state law, the children could not be found dependent upon the wage earner either by deeming or in actuality at the time of his death. As stated in the Social Security Act and Regulations, the children must be dependent upon the insured at a very specific time, in this case, as the date of death. On that date, the children were living with and legally dependent upon Floyd Jones, their step-father and adopting father. The voiding of the adoption decree, even ab initio, does not negate the fact that the children were dependent upon their step-father on the relevant date. The intent of Congress in promulgating the dependency requriements of the Act was to protect those children who were deprived of support

by the death of the insured. Since a natural parent has a legal obligation to support his children, dependency can be deemed. However, in the case of children adopted by another, such assumptions cannot hold. It is clear in this case that the death of the wage earner did not deprive the children of support either legally or in actuality. Therefore, the Appeals Council finds that the children were not dependent upon the wage earner at the time of his death nor can they be deemed to be so dependent. To find otherwise would be contrary to both the intent and effect of the Social Security Act and would permit the state courts to adjudicate Social Security claims at their will and to allow claimants to retroactively alter the facts in a case to suit their own purposes. Therefore, the Appeals Council adopts the findings of fact set forth in the hearing

decision of September 30, 1977.

DECISION OF THE APPEALS COUNCIL

It is the decision of the Appeals Council that, based upon their application of August 6, 1975, David, Lora, and Loren Ladd are not entitled to surviving child's benefits as they were not and can not be deemed to be dependent upon the deceased wage earner at the time of his death, and Jacquely A. Jones is not entitled to mother's insurance benefits as she does not have a child of the wage earner as defined in the Social Security Act in her care. It is the further decision of the Council that the claimants were without fault in causing the overpayment of such benefits and that recovery would defeat the purpose of title II and be against equity and good

conscience; the overpayment is waived.

APPEALS COUNCIL

/s/John W. Chambers, Member
John W. Chambers, Member

/s/Roland L. Vaughn, Jr. Member
Roland L. Vaughan, Jr., Member

Date: October 31, 1980

List of Exhibits

Jacquelyn A. Jones (Claimant) 435-54-7269 (Social Security No.)

Jack A. Ladd (Deceased) (Wage Earner)

Exhibit No.	Description
AC-1	Plaintiff memorandum served on July 2,1979.
AC-2	Transcript of proceedings before the Honorable George E. Juba, United States Magistrate, an December 17, 1979.
AC-3	Order filed on March 4, 1980 in the Circuit Court of the State of Oregon for Lane County in the Matter of Adoption of Loren, Lora, and David Ladd by Floyd Samuel Jones, Jr.
AC-4	Plaintiff's memorandum in opposition to defendant's further reply brief served on April 7, 1980.
AC-5	Findings and Recommendation date May 5, 1980 of United States Magistrate in the United States District Court for the District of Oregon.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JACQUELYN A. JONES and JACQUELYN A. Jones, as Guardian Ad Litem for LOREN A. LADD, LORA ANNE LADD, and DAVID LADD, Minors, Plaintiff, vs. JOSEPH A. CALIFANO, JR., Secretary of Health and Human Services, Defendant.	Civil No. 78-482 (842) FINDINGS AND RECOMMENDATION (filed May 5, 1980)

Pursuant to 42 U.S.C. § 405(g) plaintiff seeks judicial review of a final decision of the Secretary of Health, Education and Welfare terminating plaintiff's children's and mother's Social Security benefits. The case appears to be one of first impression, resolving itself ultimately into one question: whether the judicial setting-aside of an adoption operates retroactively to enable the children to

draw benefits on the account of their deceased natural father.

The issue arose out of a long and unusual sequence of events. In January, 1961, in California, plaintiff Jacquelyn McDuffee married Jack A. Ladd, the wage-earner in the case. From this marriage were born three children, the minor plaintiffs. In November, 1968, plaintiff-mother obtained a final divorce decree from wage-earner Ladd and one month later she married Floyd Jones. Shortly thereafter, the mother, her children, and the new husband moved to Oregon where Mr. Jones filed with the Lane County Circuit Court to adopt the children and give them his surname. The court issued an adoption decree on August 4, 1969, which recited that Jack Ladd had given his consent to both the adoption and the name change and that said consents were on file with the court.

Wage-earner Jack Ladd subsequently moved to Arizona. While domiciled there, he was killed in an automobile accident in New Mexico in February, 1971. About a year later, in May, 1972, the marriage of plaintiff to Floyd Jones was dissolved by the court in Lane County, Oregon. The divorce decree awarded custody of the minor children to the mother and ordered Floyd Jones to pay child support. Plaintiff later testified that he paid little, if any, support.

In August, 1975, plaintiff Jacquelyn Jones filed applications for mother's and surviving children's Social Security benefits on the account of Jack Ladd, the children's deceased natural father. When these claims were denied, plaintiff filed a timely request for reconsideration which was also denied. This denial, drafted in Social Security Mid-America Program Center,

included a lengthy explanation of why the children were not entitled to benefits. Plaintiff immediately filed a request for a hearing. Before a hearing date could be set, the Mid-America Program Center revised its earlier denial of benefits. In August, 1976, the center issued a Special Determination that the children did indeed meet entitlement standards. A retroactive lump sum payment was made, and the children began receiving monthly benefits; mother's benefits were held back from plaintiff only because of her high earnings.

With the children receiving Social Security on the account of Jack Ladd, the mother sought a court order setting aside their 1969 adoption by Floyd Jones. Whatever may have been her motives (and plaintiff testified that she wished to relieve Jones of his support obligations), the adoptive father consented to this

change. In October, 1976, the Lane County Circuit Court issued a set-aside decree, ordering that "for all intents and purposes said children shall be considered to be the children of Jack A. Ladd," and changing the children's names back to Ladd.

This state of affairs lasted only a short time. In April, 1977, the Mid-America Program Center again revised the Special Determination and concluded that the children were not after all entitled to benefits. The Center determined that all benefits paid were in fact overpayments. Notice was sent to plaintiff, who requested a hearing to contest this determination. Benefits were terminated and in August, 1977, a hearing was held before Administrative Law Judge (ALJ), at which plaintiff and her attorney appeared and testified.

In September, 1977, the Administrative

Law Judge issued his decision. Based on the exhibits and the testimony, the Administrative Law Judge found that: (a) the children were issue born to the marriage of the claimant-mother and Jack Ladd (finding #4); (b) the children were adopted by Floyd Jones in August, 1969, prior to Jack Ladd's death and with Ladd's consent (finding #7); (c) at the time of Ladd's death, the children were not living with Ladd nor was he contributing to their support (finding #10); (d) the Lane County court order setting aside the adoption, issued after Ladd's death, had no legal force or retroactive effect for Social Security purposes (finding #12); and (e) none of the children qualified as Ladd's children under the Act. The ALJ decided that the children were not entitled to draw benefits on Jack Ladd's account. He also concluded that the mother was ineligible to

receive benefits, since she did not have in her care any minor children entitled on the wage-eaners's account. The ALJ did, however, waive recovery of the alleged overpayment. Upon plaintiff's request for review, the Appeals Council concluded that the decision of the ALJ was correct and it became the final decision of the Secretary.

In May, 1978, plaintiff filed this appeal in the United States District Court. While the appeal was pending, plaintiff sought a judicial clarification of the 1976 set-aside decree issued by the Lane County Circuit Court. In an order dated March 4, 1980, the Circuit Court judge decreed that the 1976 set-aside order was retroactive and that the adoption of the three plaintiff children by Floyd Jones was "void ab initio."

SCOPE OF REVIEW

In a Social Security appeal, the fin-

dings of the Secretary as to any fact, if supported by substantial evidence, must be upheld by the reviewing court. Benitez v. Califano, 573 F.2d 653, 655 (9th Cir. 1978). However, judicial review of a final administrative decision also entails determining whether that decision reflects proper application of the correct law. Holland v. Flemming, 193 F. Supp. 290, 291 (D. Oregon 1961). The judicial deference given to findings of fact supported by substantial evidence is not afforded to conclusion based on incorrect interpretations of questions of law. Conley v. Ribicoff, 294 F. 2d 190, 194 (9th Cir. 1961). None of the critical facts in the instant case are in dispute. Instead, I must determine whether the Secretary correctly applied the relevant statutes.

APPLICABLE LAW

Since the Social Security Administration adopted varying positions while handling these claims, a concise statement of the applicable law on children's benefits seems an advisable starting point. Plaintiff does not question the ruling as to mother's benefits, since that flows inevitably from the decision on children's benefits.

The basic eligibility requirements for children's benefits are set forth in § 402 (d) of the Act. This section must be read in conjunction with § 416 regarding the determination of family status. Among the listed requirements are two distinct but related factors, namely the child-parent relationship and the dependency of the child on the wage-earner. Failure to separate these two factors has caused much

of the confusion in this case. For a person to qualify for child's benefits, he must first be the "child" of the wage-earner. Additionally, he must be, or have been, dependent on that wage earner at the mandatory time, that is at the time of the wage earner's death. 42 U.S.C. §402 (d)(1)(c)(ii).

A legitimate child proves his relationship to the wage earner father by means of his birth certificate. 20 C.F.R. §404.731. Thus, in the present case, the "child" status of plaintiff children with regard to their natural father, Jack Ladd, is not to be questioned. But that, by itself, is not enough. "Dependency" is also required.

For legitimate children the dependency issue is usually never raised. Section 402 (d)(3) automatically and perpetually confers "deemed dependency" on such children

vis-a-vis their natural father. However, there is one important exception. If "at such time such insured individual was not living with or contributing to the support of such children....and such children had been adopted by some other individual" the children are not deemed to be dependents of the natural father.

Therefore, section 402 (d)(3) presumes that the children in question are in fact issue of the deceased father. The exclusionary language describes the only situation in which the Social Security Administration denies the "deemed dependency" presumption to legitimate children.

CONCLUSION

In the present case, then, all references to the status of plaintiff children as "children" of Jack Ladd are irrelevant and

superfluous. The Secretary does not dispute that these children are the legitimate issue of Jack Ladd and are therefore his "children" for Social Security purposes. However, the Secretary points out that this fact would not be sufficient for entitlement, if they fail to meet the "dependency" test because of their adoption.

The critical fact here is that five years after Ladd's death and seven years after the adoption of the children by Jones, the mother secured a court order setting aside that adoption. Subsequently that same court formally ruled that this set-aside order was retroactive and that the adoption was void ab initio. The question is whether the latest decree removes the children from the statutory exception and restores them to the status of automatic "deemed dependency" on their

deceased natural father, Jack Ladd.

There appears to be no case directly on point. However, several Social Security cases involving widow's benefits are analagous to this action. The issue in each case was whether a judicial order invalidating a marriage wiped it off the record so completely that for Social Security purposes it could be considered never to have existed. In Holland v. Ribicoff, 219 F.Supp. 274 (D. Oregon 1962), decided under an earlier version of the Act, the court held that an Oregon court order voiding a marriage ab initio fixed the widow's status as having never been married. Accordingly, the court ruled that the Secretary was bound by this state court determination. The court stressed that the decree in question explicitly spelled out the retroactive voiding of the marriage. Accord, Legory v. Finch, 424 F.2d 406 (3rd

Cir. 1970).

There is Oregon precedent holding that a state court may, under certain circumstances, set aside an adoption decree with a similarly retroactive effect. In Huges v. Aetna Casualty Company, 234 Or. 426, 383 P.2d 55 (Oregon 1963), an Oregon court voided an adoption decree retroactively so as to permit the child to inherit from his natural mother as though the adoption decree had never taken effect.

The Secretary and this court must give the Lane County decree exactly the weight and effect which it purports to carry. Since that decree expressly voids the original 1967 adoption ab initio, it fixes the plaintiff childrens' legal status as that of never having been adopted by Jones. Therefore, the children, as the natural children of Jack Ladd, must be deemed to have been dependent on Ladd at the time of

his death.

Plaintiff's motion to supplement the record is granted. A certified copy of the Lane County Circuit Court order voiding ab initio the decree of adoption is made part of the record.

The Secretary should be given the opportunity to reconsider the decision in light of the state court's order. Accordingly, I find that good cause exists for remanding this action to the Secretary for additional hearing. A copy of the relevant state court order is attached.

Dated this 5 day of May, 1980.

/s/George Juba
United States Magistrate

APPENDIX F

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LANE

IN THE MATTER OF THE ADOPTION OF LOREN A. LADD, LORA ANNE LADD, and DAVID LADD, Minor Children, by FLOYD SAMUEL JONES, JR.	)	No. 3643 O R D E R (filed March 4, 1980)

THIS MATTER having come for hearing before the Honorable F. Gordon Cottrell on the 20th day of February 1980, to determine whether a prior Order to set aside a Decree of Adoption in the above entitled matter dated the 18th day of October 1976 is retroactive to August 4, 1969. And to determine whether the Decree of Adoption entered the 4th day of August 1969 in the above entitled matter is Void Ab Initio. This hearing was requested by Jacquelyn Anne Jones, Loren A. Ladd, Lora Anne Ladd

and David Ladd.

After receiving Testimony from the following persons: Vernette Christensen, Sonny Becker, Jacquelyn Jones, Loren A. Ladd, Jim Lakehomer, and Wayne Allen regarding whether Mr. Jack A. Ladd, deceased, had the mental ability to consent to the adoption of his children on August 4, 1969. The Court finds from the Testimony that Mr. Jack A. Ladd did not possess the mental ability to consent to the adoption of his children by Mr. Floyd Samuel Jones, Jr. on August 4, 1969.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Order entered by the Honorable F. Gordon Cottrell on October 18th, 1976, which Order set aside the Decree of Adoption, is retroactive to August 4, 1969.

It is further order, adjudged and decreed that the Court finds that Mr. Jack

A. Ladd, deceased, lacked the mental ability to give his consent to the adoption of Loren A. Ladd, Lora Anne Ladd, and David Ladd, by Mr. Floyd Samuel Jones, Jr., on August 4, 1969. Therefore the adoption is Void Ab Initio.

IT IS SO ORDERED this 4th day of March, 1980.

/s/F. Gordon Cottrell
CIRCUIT COURT JUDGE

APPENDIX G

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LANE

IN THE MATTER OF THE ADOPTION OF LOREN A. LADD, LORA ANNE LADD, and DAVID LADD, Minor Children, by FLOYD SAMUEL JONES, JR.	)	No. 3643 O R D E R (filed October 18, 1976)

THIS MATTER having come before the Court on the Motion of Jacquelyn Anne Jones supported by her Affidavit and the Consent of Floyd Samuel Jones, and the Court having fully considered the matter,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Decree of Adoption heretofore entered in the above entitled case by this Court on the 4th day of August, 1969, be set aside and the names of each of the children be restored to their prior names as follows:

LOREN A. LADD, LORA ANNE LADD AND DAVID LADD and that for all intents and purposes said children shall be considered to be the children of Jack A. Ladd and that Floyd Samuel Jones, Jr. shall have no further claim whatsoever to said minor children.

IT IS SO ORDERED this 18th day of October, 1976.

/s/F. GORDON COTTRELL
CIRCUIT JUDGE

Office - Supreme Court, U.S.
FILED
NOV 25 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-525

In the Supreme Court of the United States

OCTOBER TERM, 1983

JACQUELYN A. JONES, ETC., PETITIONER

v.

MARGARET M. HECKLER,
SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Adoption of Hadtrath, In re, 121 Ariz. 606, 592 P.2d 1262 5

Bishop v. *Wood*, 426 U.S. 341 4

Codd v. *Velger*, 429 U.S. 624 6

Durfee v. *Duke*, 375 U.S. 106 5

Goldberg v. *Kelly*, 397 U.S. 254 6

Jones v. *Roach*, 118 Ariz. 146, 575 P.2d 345 5

Levy v. *Louisiana*, 391 U.S. 68 6

State v. *Briggs*, 245 Or. 503, 420 P.2d 71 4

Treinies v. *Sunshine Mining Co.*, 308 U.S. 66 5

United States v. *Lovasco*, 431 U.S. 783 6

Constitution and statutes:

U.S. Const. Art. IV, § 1 4

28 U.S.C. 1738 4

Social Security Act, 42 U.S.C. (& Supp. V) 301 *et seq.*:

42 U.S.C. 402(d)(3) 6

42 U.S.C. 416(h)(2)(A) 4

Or. Rev. Stat. § 109.381 (1981) 4, 5

§ 109.381(3) 4

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-525

JACQUELYN A. JONES, ETC., PETITIONER

v.

MARGARET M. HECKLER,
SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner claims that the Secretary of Health and Human Services erroneously determined that she and her children by her former husband, a deceased wage-earner, were not entitled to Social Security benefits on his account.

1. The facts are not in dispute. Petitioner married Jack Ladd in 1961, and three children were born of that marriage (Pet. App. A2). Petitioner and Jack Ladd were divorced on November 21, 1968, and one month later petitioner married Floyd Jones (*id.* at A23-A24). With Jack Ladd's consent, Jones adopted the three Ladd children in a 1969 proceeding in the Circuit Court of Oregon for Lane County (*id.* at A8).

In 1971, Jack Ladd, then a resident of Arizona, was killed in an automobile accident (Pet. App. A3). In 1972, petitioner divorced Floyd Jones (*ibid.*). In 1975, petitioner applied for Social Security benefits for herself and her three

children on the account of Jack Ladd (*id.* at A8-A9). The Social Security Administration initially determined that petitioner and her children were entitled to benefits, and they received a lump sum retroactive payment in August 1976 and monthly payments thereafter; in all, petitioner and her children received $14,495.20 in benefits (Pet. 8; Pet. App. A39).

Shortly after she first began receiving Social Security benefits for herself and her children, petitioner obtained an order from the Circuit Court of Oregon for Lane County, dated October 16, 1976, which "set aside" Jones's 1969 adoption of the Ladd children and further provided that, " 'for all intents and purposes said children shall be considered to be the children of Jack A. Ladd' " (Pet. App. A40).

In April 1977, the Social Security Administration reversed its initial determination, concluding that petitioner and her children were not entitled to benefits on the account of Jack Ladd because the children had been adopted by Jones and there was no basis under Oregon law for the setting aside of the adoption decree (Pet. App. A40-A42). Although future benefits were terminated, the Social Security Administration waived recovery of the nearly $15,000 that had already been paid to petitioner and her children (*id.* at A18, A42).

Petitioner then filed this action in the United States District Court for the District of Oregon, seeking review of the Secretary's decision to terminate the benefits she and her children previously had been receiving. Before any decision had been rendered by the district court, petitioner sought "clarification" from the Oregon Circuit Court of its 1976 order setting aside the 1969 adoption decree (Pet. App. A42). The state court, in a decision dated March 4, 1980, held that its 1976 "set-aside" order was retroactive to 1969 and that the adoption of the Ladd children by Floyd Jones

was void ab initio because Jack Ladd had lacked the mental capacity to consent to the adoption of his children (*id.* at A51-A53). In light of this action by the state court, the federal district court remanded petitioner's case to the Secretary for reconsideration (*id.* at A50).

On reconsideration, the Social Security Administration adhered to the position that petitioner and her children were not entitled to benefits on the account of Jack Ladd (Pet. App. A17-A35). That determination was based on the conclusion that the Oregon court's orders of 1976 and 1980 were beyond the authority of that court to enter because Oregon law provides that an adoption decree is final and binding on all parties after one year, and thus Arizona, Ladd's place of residence at the time of his death, would not recognize the validity of the Oregon orders setting aside the adoption (*id.* at A30-A31). In addition, the Social Security Administration determined that petitioner's children were not entitled to benefits in any event because they were not in fact dependent on Ladd for their support at the time of his death (*id.* at A31-A32).

The district court upheld the decision of the Social Security Administration on remand (Pet. App. A7-A16). The court of appeals affirmed in an unpublished memorandum (*id.* at A2-A6).

2. The unanimous decisions of the administrative agency and the courts below warrant no further review. The Secretary was correct in denying petitioner's claim for Social Security benefits for herself and her children.

a. The Secretary's denial of benefits turns on whether an Arizona court would recognize the 1976 and 1980 Oregon court orders setting aside the prior adoption decree as void ab initio. Although no Arizona court has ruled in this case,

Arizona was Ladd's domicile at the time of his death, and thus, for purposes of Social Security benefits, its law governs the legal question of his children's paternity. See 42 U.S.C. 416(h)(2)(A). Accordingly, what petitioner dresses in constitutional clothes is simply an issue of state law. Cf. *Bishop* v. *Wood*, 426 U.S. 341, 344-347 (1976). While "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State" (U.S. Const. Art. IV, § 1), Arizona must give the Oregon judgments only as much credit as they have "by law or usage in the courts of such State * * * from which they are taken." 28 U.S.C. 1738.

b. The state from which the 1976 and 1980 orders are taken would not enforce them. Under Oregon's own law, the Lane County Circuit Court lacked power to issue the "set-aside" orders because the 1969 adoption decree was impervious to attack after 1970. Or. Rev. Stat. § 109.381 (1981);[1] *State* v. *Briggs*, 245 Or. 503, 506, 420 P.2d 71, 72 (1967) (collateral attack on a court's jurisdiction barred unless lack of jurisdiction appears on the face of the record). The 1969 adoption decree is unquestionably valid on its face; no case cited by petitioner (Pet. 19-22) suggests otherwise. In taking testimony in 1980 to conclude that Jack Ladd lacked mental capacity in 1969 to consent to the adoption, the Lane County Circuit Court thus exceeded its own jurisdiction. See Pet. App. A5, A14-A15. The Full Faith and Credit Clause does not require Arizona to give

---

[1]In pertinent part, that statute provides as follows:

> (3) After the expiration of one year from the entry of a decree of adoption in this state the validity of the adoption shall be binding on all persons * * *, all irrespective of jurisdictional or other defects in the adoption proceeding; after the expiration of such one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings * * *.

the 1980 order more force than it could have in Oregon, the doctrine of res judicata notwithstanding.[2]

c. Under petitioner's own analysis (Pet. 18), Arizona would not go behind a facially valid adoption decree that is recognized in the rendering state. See *In re Adoption of Hadtrath*, 121 Ariz. 606, 592 P.2d 1262 (1979).[3] Unlike the unenforceable and facially invalid 1980 order, the 1969 adoption decree meets the test for full faith and credit in Arizona. See, *e.g.*, *Jones* v. *Roach*, 118 Ariz. 146, 575 P.2d 345 (Ct. App. 1978). Under these circumstances, the Secretary and the courts below correctly determined that petitioner and her children are not entitled to Social Security benefits on the account of Jack Ladd.

---

[2]Petitioner cites (Pet. 23) *Treinies* v. *Sunshine Mining Co.*, 308 U.S. 66 (1939), for the proposition that even if the Lane County Circuit Court lacked jurisdiction to enter the 1980 order, Arizona should not "re-explor[e]" that question. But nothing in the 1980 order reflects any exploration at all of jurisdiction or of the effect of Or. Rev. Stat. § 109.381 (1981). See Pet. App. A51-A53. Moreover, petitioner does not claim that she ever advised the Lane County Circuit Court of the statutory bar to the issuance of any orders affecting the 1969 adoption decree.

Thus, more apt than *Treinies* is the Court's observation in *Durfee* v. *Duke*, 375 U.S. 106, 110 (1963), that "a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits — had jurisdiction, that is, to render the judgment." Furthermore, the court in the second state is entitled to ascertain whether "questions [of jurisdiction] have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Id.* at 111.

[3]In *Hadtrath*, the Arizona Supreme Court refused to permit an adoptive father to challenge an allegedly invalid adoption decree that he had previously obtained in a non-adversary proceeding, stating (121 Ariz. at 610, 592 P.2d at 1266):

> In the case before us, appellant was not prevented from presenting any matter to the court [that issued the adoption decree]. On the contrary, he joined in presenting the allegedly fraudulent consent [of the natural father] to the court.

Here, too, petitioner should not be permitted to attack the 1969 adoption decree that she herself helped to procure.

3. As previously noted (see pages 2-3, *supra*), the district court initially remanded this case to the Secretary to reconsider the denial of benefits in light of the 1980 Oregon order. Petitioner now makes the meritless claim (Pet. 24-26) that the Secretary's subsequent failure to hold another evidentiary hearing was a denial of due process. In its order of remand, however, the district court (adopting the recommendations of the magistrate) concluded that "[n]one of the critical facts * * * are in dispute" (Pet. App. A43) and that the only question was one of law, *i.e.*, "whether the [1980] decree * * * restore[d] [the children] to the status of automatic 'deemed dependency' " on Ladd within the meaning of the Social Security Act, 42 U.S.C. 402(d)(3). (Pet. App. A47). Petitioner cites no authority for the proposition that the Constitution requires an evidentiary hearing when there are no disputed facts about which to hear evidence. See *Codd* v. *Velger*, 429 U.S. 624, 627 (1977). Compare *Goldberg* v. *Kelly*, 397 U.S. 254, 268-269 (1970).

4. Finally, petitioner's equal protection claim is frivolous.[4] She appears to argue (Pet. 28-31) that adopted children *not* deprived of financial support by their natural father's death have an interest in obtaining survivor's benefits equal to that of children who *are* deprived of such support. But the former are not "invidious[ly] classifi[ed]." Cf. *Levy* v. *Louisiana*, 391 U.S. 68, 71 (1968). The Secretary's denial of benefits to them bears a reasonable relationship to all five of the purposes of the Social Security Act that petitioner herself cites (Pet. 29) because they all concern compensating actual, not fictional, economic loss.[5]

---

[4]Petitioner did not raise her equal protection claim in the lower courts, and thus it should not be considered here. See, *e.g.*, *United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977).

[5]Petitioner's concern (Pet. 27-28, 31) that the legal status of her children now "lacks consistency and predictability," even if true, raises no equal protection issue, nor does it have anything to do with the

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

NOVEMBER 1983

Secretary's determination that petitioner's children are not entitled to Social Security benefits on account of their natural father's death.

DOJ-1983-11